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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,307	01/23/2002	Timothy J. Ley	S63.2-8618	7519
490	7590	10/08/2004	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,307

Applicant(s)

LEY ET AL.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,6,7,12-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2002-2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims 2-3, 6-7 and 12-36 drawn to non-elected inventions. In June 29, 2004, applicant elected to prosecute Species I. Furthermore, applicant stated that claims 1, 4-5, 8-28, 32-33 and 35 read upon the elected Species. To further the prosecution of the application, the examiner has elected claims 1, 4-5 and 8-11, which read on Species 1. Non-elected claims 12-20 are drawn to Species II of Figs. 5-6 and non-elected claims 21-28, 31-36 are drawn to Species IV of Figs. 9-11. Therefore, none -elected claims 2-3, 6-7 and 12-36 are withdrawn from further consideration. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made **Final**.

Claim Objections

2. Claim 1 is objected to because of the following informalities, which can be corrected as follows: In line 4, "from a" should be replaced by -- from the --. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5 and 8-11 are rejected under 35 U.S.C. 102 (b) as being anticipated by Bynon et al (U.S. 5,667,523).

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Bynon et al disclose in figs. 2-3 and 6-7, a stent for securing and anchoring the graft to the wall of the blood vessel having the limitations as recited in claim 1, including: at least one serpentine segment (16), the serpentine segment comprises a plurality of peaks (26,28) and troughs (30,32), and where a plurality of first peaks (26) disposed at a first distance from the longitudinal axis of the stent, where a plurality of second peaks (28) disposed at a second distance from the longitudinal axis of the stent, where the second distance is less than the first distance (see fig. 6), and where the first peaks define a cylindrical outer surface (18) of the segment.

Regarding claims 4-5, Bynon et al disclose the peaks (26,28) are equidistant from the longitudinal axis of the stent, and where the troughs (30,32) arranged in a regular alternating pattern about the longitudinal axis (see figs. 6-7).

Regarding claims 8-9, Bynon et al disclose the stent comprises a plurality of serpentine segments (fig. 3) and where the serpentine segments are adjacent from one another.

Regarding claims 10-11, Bynon et al disclose the second peaks (28) define a cylindrical inner surface (20) of the segment, where the cylindrical inner surface of the segment tapers outward toward the cylindrical outer surface of the segment.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,348,065 to Brown

U.S. Pat. No. 6,334,869 to Leonhardt

U.S. Pat. No. 5,258,027 to Berghaus

U.S. Pat. No. 6,776,793 to Brown

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Nguyen can be reached on (703) 305-4898. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn VV
10/5/2004



JULIAN W. WOO
PRIMARY EXAMINER